IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U. S.
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No. 78-1866

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LODGE #82,
Petitioner,

-VS-

DETROIT COIL COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Court

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 594 F.2d 575 and is also found beginning at page 14 in Appendix A of the Petition. The opinion of the District Court is unreported but is found beginning at page 30 in Appendix A of the Petition.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTION PRESENTED

Whether the Court of Appeals erred in setting aside an arbitration award which was not rationally deduced from the underlying collective bargaining agreement and which did not draw its essence from that agreement.

STATUTES INVOLVED

The relevant statutory provisions are set forth herein in Appendix A, found at 1A.

COUNTERSTATEMENT OF FACTS

The dispute which lead to the institution of the action in the District Court arose with respect to a notification requirement under Article 5, Section 1(d) of the collective bargaining agreement during the processing of a grievance.[1] The merits of the underlying grievance are irrelevant to the instant appeal.

During the processing of the grievance, the International Association of Machinists and Aerospace Workers, Lodge 82 (hereinafter "The Union") failed to notify Detroit Coil Company (hereinafter "The Company") and the American Arbitration Association within the eight day period set forth in Article 5, Section 1(d) of its decision to pursue the matter to arbitration. The Company took the position that the grievance was therefore settled under Section 1(d). The Union took the position that the grievance was still pending since both parties had been late in processing grievances in the past, and neither party had used the failure to comply with the time limits to deny grievances. The parties agreed to submit the issue of whether or not the procedural requirement of Section 1(d) had been satisfied to arbitration.

Notwithstanding the language of Section 1(d) and the Union's failure to notify both the Company and the American Arbitration Association within eight days, the arbitrator found that the grievance should be heard on its merits. The decision was based on several considerations. The arbitrator found that the parties had not used timeliness in the past to deny grievances. In addition, the Union did not consider the grievance to be settled. The arbitrator also concluded that the denial of arbitrability would "result in a

[1] Section 1 of Article V is set forth in Appendix B beginning at 2a.

deterioration of the good Company-Union relationship." (Pet. App. 45)[2]

The Company filed its action pursuant to 29 U.S.C. Section 185 and 9 U.S.C. Section 10(d) to vacate the arbitration award. The Company asserted that the arbitrator exceeded his authority by ignoring the express terms of Section 1(d) in making his determination.

The District Court denied the application to vacate the award. The District Court found that the arbitrator had made factual determinations concerning the past practice of the waiver of the timeliness defense. The District Court held that the arbitrator's construction of the agreement could not be reviewed since it was based upon a construction of the agreement and the manner in which the parties had interpreted and applied the agreement in the past. (Pet. App. 15)

The Company appealed the denial of application for vacation to the United States Court of Appeals for the Sixth Circuit. The Court of Appeals reversed the District Court and found that the arbitration award was contrary to the explicit terms of the agreement and was, accordingly, beyond the scope of the arbitrator's authority.

The Court of Appeals acknowledged that the courts are to refrain from reviewing the merits of an arbitration award, citing *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). The Court of Appeals noted that *Enterprise Wheel* contained a significant proviso—an arbitrator is confined to the interpretation and application of the parties' agreement, and his award is legitimate only if it "draws its essence" from the agreement.

In light of the arbitrator's deviation from the express provisions of the agreement, the Court of Appeals examined whether that decision was derived in some rational way from the agreement or a "practice of the shop." The Court found

[2] References to the Appendix of the Petition are designated as "Pet. App. ".

that there was nothing in the record to support the arbitrator's interpretation that the Company and the Union intended the word "notify" under Section 1(d) to encompass the mere dating of a letter. The Court further found that the arbitrator modified Section 1(d) to require proof that the Union considered the grievance settled. There was no language in Section 1(d) to indicate that such a concession is required.

The Court also found that there was no evidence to support the argument of waiver under Section 1(d). The "practice of the shop" on which the arbitrator based his finding was with respect to Section 1(b). The Court found no evidence in the record that would allow the conclusion that the parties had, in any way, waived compliance with Section 1(d). The Court of Appeals viewed this finding of waiver as a clear failure of the award to draw its essence from the agreement.

The Court of Appeals noted that the arbitrator also based his finding of arbitrability on his view of the effect that the denial of arbitrability would have on the "good relationship" between the Company and the Union. The Court of Appeals viewed this assertion as nothing more than the arbitrator dispensing "his own brand of industrial justice." (Pet. App. 28)

The Court of Appeals concluded that the award could not be deduced rationally from the agreement and did not draw its essence from the agreement in view of the "clear and unambiguous language" of Article V and of the absence of evidence which would indicate that the parties have departed from clear meaning of that language. (Pet. App. 29) The District Court was reversed and was directed to set aside the arbitration award.

REASONS FOR DENYING THE WRIT

I. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

The Union states in its Petition that the Court of Appeals' decision is contrary to several decisions of this Court and is specifically contrary this Court's decision in *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543 (1964). The Union also asserts that the decision of the Court of Appeals is at variance with three cases, *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); known collectively as the *Steelworker's Trilogy*.

This Court's decision in *Wiley* with respect to the determination of arbitrability is inapplicable to this action. Unlike *Wiley*, the parties herein agreed to submit the question of the Union's compliance with Section 1(d) to the arbitrator. The instant action arose out of the Company's position that the arbitration award was in conflict with the express terms of the agreement and out of the Company's subsequent attempt to vacate that award. *Wiley* did not involve an attempt by one party to a collective bargaining agreement to vacate an arbitration award but rather was addressed to the issue of an employer's refusal to arbitrate at all. The Union's interpretation of the Court of Appeals' decision as being in direct conflict with *Wiley* is therefore erroneous.

The Union's interpretation and application of the *Steelworkers Trilogy* as conflicting with the Court of Appeals' decision is equally erroneous. The Union's interpretation of the *Steelworkers Trilogy* with respect to the review of an arbitration award is unrealistically narrow by ignoring this Court's specific exception to the finality doctrine. In *Enterprise Wheel*, this Court established a significant exception to the principle that the courts must

refrain from reviewing the merits of an arbitration award. That exception is as follows:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award. *Enterprise Wheel*, 363 U.S. at 597.

The Court of Appeals applied the above proviso to the arbitration award and found that the award did not draw its essence from the agreement and was not rationally deduced from the agreement. The Court of Appeals' decision is therefore consistent with this Court's decision in *Enterprise Wheel*.

II. THE DECISION OF THE COURT OF APPEALS DOES NOT PRESENT A QUESTION OF SUBSTANTIAL IMPORTANCE APPROPRIATE FOR REVIEW BY THIS COURT.

The decision of the Court of Appeals is limited to the vacation of the arbitrator's award construing Article V, Section 1(d) of the parties' collective bargaining agreement. The decision, accordingly, has limited applicability to other collective bargaining agreements because of the particular factual situation. This case presents no novel question of law which would warrant review by this Court.

The decision of the Court of Appeals is not in conflict with the decisions of other Courts of Appeal. Other circuits have recognized that an arbitrator's award must "draw its essence" from the underlying agreement and be rationally derived from the agreement. See, e.g. *Ludwig Honold Mfg.* v. *Fletcher*, 405 F.2d 1123 (3rd Cir. 1969); *Safeway Stores* v.

American Bakery Workers Local 111, 390 F.2d 79 (5th Cir. 1968); *Torrington Co.* v. *Metal Products Workers Union Local 1645*, 362 F.2d 677 (2nd Cir. 1966). This case therefore presents no significant questions to warrant review by this Court.

III. THE DECISION OF THE COURT OF APPEALS IS CORRECT IN ITS APPLICATION OF THE APPLICABLE LAW.

The Company's institution of the instant action required the lower courts to ascertain, in accordance with *Enterprise Wheel*, whether the award drew its essence from the collective bargaining agreement since the arbitrator is confined to the interpretation and application of that agreement. The District Court abdicated its review function by ignoring the language of *Enterprise Wheel*. In light of the unambiguous provisions of Article V, Section 1(d) and the arbitration award's inexplicable divergence from that language, the Court of Appeals had to ascertain whether that divergence had its basis in the agreement or in the prior practices of the parties and whether the award was rationally derived from the agreement.

The Court of Appeals correctly acknowledged that it could not overturn the award because of errors in the resolution of the factual issues. The examination of the record, however, revealed no support for the deviation from the express language. The Court of Appeals' conclusion was appropriate and consistent with established authority. *See e.g. N. F. & M. Corp.* v. *United Steelworkers of America*, 524 F.2d 756 (3rd Cir. 1975); *H. K. Porter Co., Inc.* v. *United Saw, File and Products Workers of America*, 333 F.2d 596 (3rd Cir. 1964).

The approach utilized by the Court of Appeals is sound and should not be disturbed. The arbitrator had exceeded his authority by changing the meaning of the unambiguous provision of Article V, Section 1(d). In *Enterprise Wheel*,

this Court authorized the courts to refuse to enforce an arbitration award which failed to draw its essence from the underlying agreement. The Court of Appeals' decision reflects a careful observance of the limitations imposed upon it by the *Steelworkers Trilogy* while at the same time implementing the review authorized by *Enterprise Wheel*. The Courts of Appeals' decision reversing the District Court is mandated by the arbitrator's unfounded deviation from the terms of the underlying agreement and is manifestly consistent with the rationale of *Enterprise Wheel*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

9 U.S.C. Section 10(d) states:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> > Where the arbitrators exceed their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

29 U.S.C. Section 185(a) states:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

APPENDIX B

Article V provides, in pertinent part:

Grievance Procedure

!. The procedure for the adjustment of grievances shall be as follows:

(a) The employee shall endeavor to adjust his grievance with the foreman and steward. If no satisfactory settlement is reached within 24 hours, the grievance shall be placed in writing and referred to:

(b) Chief Steward and Plant Manager. If still unsettled within 48 hours, the matter shall be referred to:

(c) 1. Committee of the Union, Union officials and officials of the Company. Should the grievance not then be settled satisfactorily, the case shall be referred to the American Arbitration Association for the selection of an impartial arbitrator. Matters properly referred shall be decided by the arbitrator and shall be binding upon both parties to this Agreement. The fees and expenses of the arbitrator shall be borne equally by both parties. It is mutually agreed that whenever possible, the AAA Expedited Arbitration procedure shall be used to process grievances.

(c) 2. The committee, as referred to above, shall consist of the Chief Steward, the Departmental Steward and an authorized representative of the Union, the Plant Manager and a representative of top management. This paragraph shall not preclude either party from calling in witnesses at the proper steps during the grievance procedure.

(d) Unless the American Arbitration Association and the Company is notified within eight (8) working days from the date which last the Local Lodge meets to select an impartial arbitrator, the grievance or grievances shall be considered settled.

(e) Discharged employees must, if aggrieved, file a grievance relating to the discharge within three (3) working days.